(2)

Supreme Court, U.S.
FILED
OCT. 4 1996
CLERK

No. 96-347

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

WARREN J. DOWNHOUR, D.O.,
VIRGINIA FORNEY, RICHARD E. SHAW,
WARREN D. JACOBS, NINO M. CAMARDESE, M.D.,
GEORGE LIERENZ, SAM GIALLOMBARDO,
DON DAUGHERTY, SARA PRESLEY, and
HILDA RUGGLES

Petitioners

v.

PETER SOMANI, M.D., Ph.D.
Director, Ohio Department of Health

Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

BETTY D. MONTGOMERY
Attorney General
JEFFREY S. SUTTON
State Solicitor
ELISE W. PORTER
Assistant Attorney General
Counsel of Record
30 East Broad Street, 26th Fl.
Columbus, Ohio 43215
(614) 466-8600
Counsel for Respondent
PETER SOMANI, M.D. Ph.D
Director, Ohio Dept. of Health

18pp

TABLE OF CONTENTS

CONSTITUTIONAL AND STATUTORY PROVISIONS . . 1

STATEMENT OF THE CASE 2

I. Statement Of The Facts 2

A. The Medicare Program 2

B. The Challenged Ohio Statute 3

II. Statement Of The Case 4

REASONS WHY THE PETITION SHOULD BE DENIED 4

I. The Decision Below Does Not Conflict With Any Lower-Court Decisions. 4

II. The Decision Below Does Not Conflict With Any Decision Of This Court; Ohio Rev. Code 4769.01 And 4769.02 Are Not Preempted By 42 U.S.C.§ 1395 *et. seq.*, and Do Not Violate the Supremacy Clause. 6

A. Congress Has Not Explicitly Preempted The State Law. 7

B. Congress Has Not Preempted The State Law By Implication. 8

C. The State Law Is Not In Conflict With The Medicare Act. 8

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Barnett Bank of Marion County, N.A. v. Nelson,
____ U.S. _____, 116 S.Ct. 1103 (1996) 10,11

California Federal Sav. and Loan Ass'n v. Guerra,
479 U.S. 272 (1987) 8

Fidelity Fed. Sav. & Loan Ass'n. v. De La Cuesta,
458 U.S. 141 (1982) 6,10,11

Florida Lime & Avocado Growers, Inc. v. Paul,
373 U.S. 132 (1963) 7

Haynes Ambulance Service, Inc. v. State of Ala.,
36 F.3d 1074 (11th Cir. 1994) 11

Hillsborough County v. Automated Medical Laboratories, Inc.,
471 U.S. 707 (1985) 7

Hines v. Davidowitz,
312 U.S. 52 (1941) 7

Jones v. Rath Packing Co.,
430 U.S. 519 (1977) 7

Maryland v. Louisiana,
451 U.S. 725 (1981) 6

Massachusetts Medical Soc. v. Dukakis,
637 F.Supp. 684 (D. Mass. 1986) *aff'd.* 815 F.2d 790 (lst Cir. Mass. 1987) *cert denied* 484 U.S. 896 (1987) 4,5,6,9,10

Medical Soc. of the State of N.Y. v. Cuomo,
777 F.Supp. 1157 (S.D.N.Y. 1991) *aff'd.* 976 F.2d 812 (2d Cir. 1992) 5

N.Y. Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,
____ U.S. ____, 115 S.Ct. 1671 (1995) 7

New York City Health and Hospitals v. Perales,
954 F.2d 854 (2d Cir. 1992), *cert. denied*, 506 U.S. 972 (1992) 11

New York St. Soc. of Orthopaedic Surgeons v. Gould,
796 F.Supp. 67 (E.D.N.Y. 1992) 5

Pacific Gas & Elec. Co. v. State Energy Resources Conserv. & Devel. Comm'n.,
461 U.S. 190 (1983) 6

Pennsylvania Medical Soc. v. Marconis,
755 F. Supp. 1305 (W.D. Pa. 1991) *aff'd* 942 F.2d 842 (3d Cir.1991) 5

Pennsylvania Medical Soc. v. Snider,
29 F.3d 886 (3rd Cir. 1994) 11

Rehabilitation Ass'n of Virginia, Inc. v. Kozlowski,
838 F.Supp. 243 (E.D. Va. 1993), *aff'd* 42 F.3d 1444 (4th Cir. 1994) *cert. denied* _____ U.S. _____, 116 S.Ct. 60 (1995) 11

Rice v. Santa Fe Elevator Corp.,
331 U.S. 218 (1947) 7

Stern v. General Elec. Co.,
924 F.2d 472 (2nd Cir. 1991) 12

OHIO STATUTES

Ohio Revised Code § 4769.01 4,6

Ohio Revised Code § 4769.02 4,6

Ohio Revised Code § 4769.03 through .10 4

FEDERAL STATUTES AND RULES

12 U.S.C. § 92 10

42 U.S.C. § 1395 1,7

42 U.S.C. § 1395b 1,2

42 U.S.C. § 1395j 1,2

42 U.S.C. §§ 1395j through 1395w-4 2

42 U.S.C. § 1395t 2

42 U.S.C. § 1395u(b)(3)(B)(i) 8

42 U.S.C. § 1395w-1 9

42 U.S.C. § 1395w-4 3

42 U.S.C. § 1395w-4(g)(2)(C) 8

56 Federal Register 59507 8

12 C.F.R. §545.8-3(f) 10

OTHER AUTHORITIES

Cal. Welf & Inst. Code §14014.3. 3

Conn. Gen. Stat. §176-552 3

Fla. Stat. §455.2455 3

H.R.Rep. No. 247, 101st Cong., 1st Sess., at 1008, *reprinted in* 1989 U.S. Code Cong. & Admin.News 1906 9

HRS §386-21 3

Mass. Gen. Laws Ann. C112 §2 3

United States General Accounting Office, MEDICARE: Impact of State Mandatory Assignment Programs on Beneficiaries (September 1989) 8,9

Minn. Stat. §62 J.25 3

N.Y. C.L.S. Health §19 3

PPRC *1989 Annual Report to Congres* 9

35 Penn. Stat. Ann. §449.31 3

33 Vt. Stat. Ann. §6501-§6508 3

. CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions reproduced in the Petition for Certiorari, the following provisions are important to the consideration of this case:

42 U.S.C. §1395:

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine * * * or over the * * * compensation of any * * * person providing health services.

42 U.S.C. §1395b:

Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

42 U.S.C. §1395j:

There is hereby established a voluntary insurance program to provide medical insurance benefits * * * for aged and disabled individuals who elect to enroll under such program, * * * .

STATEMENT OF THE CASE

The Petitioners (plaintiffs below) are several beneficiaries of the Medicare B program and two non-participating physicians who treat the Petitioner beneficiaries. Despite the fact that it is undoubtedly more expensive for beneficiaries, the Petitioners assert that the Medicare Act grants the physicians a right to "balance bill" and therefore charge up to 15% more than the Medicare approved amount. Petitioners claim that the Ohio statute, which bans the practice of balance billing, is preempted by the Medicare Act.

Petitioners argued below that the Ohio statute was unconstitutional on other grounds, including due process, equal protection, privacy and liberty rights and vagueness. These issues do not appear in the Questions Presented or the Argument sections of the Petition for Certiorari, and Respondents therefore assume that they are waived before this Court.

I. Statement Of The Facts

A. The Medicare Program

Generally, Respondent agrees with the Petitioner's explanation of the Medicare system, with the following elaboration. Medicare Part B is the exclusive focus of this case, and is funded partly through premiums paid by beneficiaries. *See* 42 U.S.C. §§ 1395j through 1395w-4; §1395t. Part B is an entirely voluntary system:

> There is hereby established a voluntary insurance program to provide medical insurance benefits * * * for aged and disabled individuals who elect to enroll under such program, * * * .

42 U.S.C. §1395j (Emphasis added) In addition, the statute specifically provides for either State-sponsored or private insurance in 42 U.S.C. §1395b.

Part B provides doctors with two payment options. They can "accept assignment," or bill the patient directly. Doctors who accept assignment ("participating physicians") bill Medicare directly for their services and accept the allowed charge as full payment. Medicare pays 80%, and the patient can be charged only the 20% copayment. Doctors who do not accept assignment ("non-participating physicians") can bill the patient directly. The doctor then must file a Medicare claim for the patient,[1] and Medicare reimburses the patient for 80% of the Medicare reasonable charge. *See* 42 U.S.C. §1395w-4. Under federal law, the doctor is permitted to bill the patient for more than the reasonable charge, but only up to a "limiting charge." Contrary to the factual representation by Respondents, and as will be shown below, the statute does not grant a non-participating physician a right to charge more than the reasonable amount in contravention of State law.

The practice by non-participating physicians of billing more than 100% of the Medicare approved amount (but less than the 115% limiting charge) is known as "balance billing." Several States have passed laws banning or limiting balance billing. Cal. Welf & Inst. Code §14014.3. Conn. Gen. Stat. §176-552; Fla. Stat. §455.2455; HRS §386-21; Mass. Gen. Laws Ann. C112 §2; Minn. Stat. §62 J.25; N.Y. C.L.S. Health §19; 35 Penn. Stat. Ann. §449.31; 33 Vt. Stat. Ann. §6501-§6508. At issue in this case is the ban on balance billing under Ohio law.

B. The Challenged Ohio Statute

Generally, Respondent agrees with the Petitioner's explanation of the Ohio law. However, one point requires

---

[1] In their briefs before the courts below, Petitioners vigorously contested the notion that a non-participating physician is required to file a claim for a Medicare beneficiary. Because they do not raise it in their Petition, Respondents assume that Petitioners have waived this issue.

elaboration. Petitioners have challenged only part of the actual "balance billing" statute, namely Ohio Rev. Code 4769.01 and .02. The parts left unchallenged are those dealing with the complaint system, Ohio Rev. Code 4769.03 through .10.

II. Statement Of The Case

Respondent generally agrees with Petitioner's Statement of the Case with the following elaboration: On March 23, 1994, the court allowed the complaint to be amended as of January 14, 1994 to substitute Respondent Somani as the sole defendant and to drop ODH as sole defendant. Petitioners have consistently named Respondent Somani in both his individual and official capacities. Dr. Somani enforces the law only in his official capacity, and therefore can be sued only in his official capacity to enjoin him from enforcing a State law. It was and is incorrect for Dr. Somani to have been named in his individual capacity in the courts below, and before this Court.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The Decision Below Does Not Conflict With Any Lower-Court Decisions.

As noted above, a number of States have laws that limit or ban balance billing of Medicare beneficiaries. Petitioners failed to advise this Court that several of these laws have been challenged on preemption grounds in the federal courts. Without exception, every federal court to consider the issue has held that States are not preempted from limiting or banning balance billing of Medicare beneficiaries.

In *Massachusetts Medical Soc. v. Dukakis,* 637 F.Supp. 684 (D. Mass. 1986) *aff'd.* 815 F.2d 790 (1st Cir. Mass. 1987) *cert denied* 484 U.S. 896 (1987)), the Massachusetts Medical Society, the American Medical Association ("AMA") and an individual doctor challenged the validity of a Massachusetts statute. The statute required, as a condition for a medical license, that the physician agree not to balance bill under Medicare. 637 F.Supp.

at 686. Plaintiffs challenged the statute on a number of constitutional grounds including preemption. The District Court held that the Massachusetts law was not preempted by Medicare. In an opinion written by then-Circuit Judge (now Justice) Breyer, the United States Court of Appeals for the First Circuit affirmed the District Court, again holding that the Massachusetts statute was not preempted. This Court denied certiorari.

In *Pennsylvania Medical Soc. v. Marconis*, 755 F. Supp. 1305 (W.D. Pa. 1991) *aff'd* 942 F.2d 842 (3d Cir. 1991), local medical societies and the AMA, as well as an individual doctor, brought a declaratory judgment action that a Pennsylvania statute forbidding balance billing was preempted by federal law. The District Court held that despite additional amendments to the Medicare Act since the *Dukakis* case, Pennsylvania's law was not preempted by the federal Act. 755 F.Supp. at 1308-1314. The United States Court of Appeals for the Third Circuit affirmed.

In *Medical Soc. of the State of N.Y. v. Cuomo*, 777 F.Supp. 1157 (S.D.N.Y. 1991) *aff'd*. 976 F.2d 812 (2d Cir. 1992), the district court likewise held that New York's balance billing statute was not preempted by Medicare. 777 F.Supp. at 1160-1164. The United States Court of Appeals for the Second Circuit affirmed, 976 F. 2d at 816-820.

While *Cuomo* was on appeal, another organization representing physicians filed suit challenging the New York statute. *New York St. Soc. of Orthopaedic Surgeons v. Gould*, 796 F.Supp. 67 (E.D.N.Y. 1992). The district court held that the New York statute was not preempted. 796 F.Supp. at 71-74.

In short, no fewer than nine federal courts have considered the precise issue in this case, and without exception have concluded that States are not preempted from limiting or banning balance billing of Medicare beneficiaries. There is no conflict in the courts, nor is there confusion in applying the holdings.

A large number of States have statutes limiting or banning balance billing. The States have enacted these laws relying on a decade of court decisions holding that they are not subject to

preemption by Medicare. Revisiting this issue now would cast doubt and confusion on one of the States' most effective tools in fighting the spiraling cost of health care.

In the absence of conflict in the lower courts, and in the face of strong reliance by the States, the issue of State limits on balance billing does not need to be addressed by the Court at this time. This Court refused certiorari on the issue in *Dukakis*. The reasons for refusing the issue at this time are, if anything, stronger than they were in 1987.

II. The Decision Below Does Not Conflict with Any Decision of this Court; Ohio Rev. Code 4769.01 And 4769.02 Are Not Preempted By 42 U.S.C. § 1395 et seq., and Do Not Violate the Supremacy Clause.

Not only is there no conflict between the decision below and the holdings of other lower courts, but there is no conflict with other cases decided by this Court. In addition, although the statute permits balance billing as a matter at federal law, it does not preclude a ban on balance billing as a matter of State law. Because the State law in this case is not preempted, and because the case presents no new issues in the area of preemption, this Court has no reason to entertain it.

The *sine qua non* of preemption is the intent of Congress. *Fidelity Fed. Sav. & Loan Ass'n. v. De La Cuesta*, 458 U.S. 141, 152 (1982). Petitioners have ignored several indications by Congress that preemption was not intended.

When Congress regulates in an area which is traditionally within the States' police powers, the party arguing preemption must overcome the strong presumption that Congress does not intend to displace State law. *Pacific Gas & Elec. Co. v. State Energy Resources Conserv. & Devel. Comm'n.*, 461 U.S. 190, 206 (1983); *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). In a preemption case decided two terms ago, this Court reiterated a well-established principle: that health care regulation is

"historically a matter of local concern" and a "field of traditional state regulation." *N.Y. Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ____ U.S. ____, 115 S.Ct. 1671, 1680 (1995), *citing Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719 (1985). Petitioners have not addressed this presumption, let alone overcome it.

As correctly pointed out by Petitioners, there are three ways by which Congress can preempt state law: explicitly (*Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)); by implication (*Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)); and by conflict (*Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963)); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). None of these three apply in this case.

A. Congress Has Not Explicitly Preempted the State Law.

Petitioners have not, nor can they, argue that Congress has explicitly preempted the States from regulating balance billing. Not only is there no explicit language preempting the States, there is an express statement of unwillingness to usurp the States in the Medicare Act:

> Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine * * * or over the * * * compensation of any * * * person providing health services.

42 U.S.C. 1395.

Explicit preemption does not apply.

B. Congress Has Not Preempted the State Law By Implication.

Petitioners do not specifically argue that State law is preempted by implication, but assert that Congress has engaged in a large and expensive program of physician payment reform. The inference is that this has "crowded out" the States in terms of regulation of physician payment. However, the reform program referred to by Petitioners replaces the "reasonable charge" for which Medicare pays 80%. See, 56 Federal Register 59507. As explained above, balance billing involves charges greater than the "reasonable charge" or "fee schedule payment amount." The federal agency has not been empowered under statute or regulation to regulate charges greater than the "reasonable charge." Preemption by implication does not apply.

C. The State Law Is Not In Conflict With the Medicare Act.

Conflict preemption is equally incorrect. There is no conflict between the federal and State laws because the Medicare Act merely states that reimbursement can be made on the basis of an itemized bill (§1395u(b)(3)(B)(i)) and that the limiting charge is 115% of the approved amount. (§1395w-4(g)(2)(C)). Nowhere in the language of the Act does Congress grant non-participating physicians a "right" to balance bill.

Moreover, under conflict preemption, this Court has found it "significant" when Congress is aware of a State law, but apparently does not consider it inconsistent with federal statute. An inference is thereby created that Congress did not intend to preempt. *California Federal Sav. and Loan Ass'n v. Guerra*, 479 U.S. 272, 287-88 (1987). In this case, Petitioners failed to advise this Court of considerable evidence that Congress has been aware of State laws limiting or banning balance billing, and yet does not consider these laws inconsistent with the federal statute.

In 1989, an entire report of the General Accounting Office was devoted to State balance billing laws. United States General

Accounting Office, *MEDICARE: Impact of State Mandatory Assignment Programs on Beneficiaries* (September 1989)(hereinafter "GAO Report"). One section of the Report actually cites *Dukakis supra.* as an "unsuccessful[] challenge[]" to the Massachusetts legislation. GAO Report at 23. In addition, the Physician Payment Review Commission ("PPRC")[2] included an entire appendix in its 1989 report regarding State prohibitions on balance billing. PPRC, *1989 Annual Report to Congress*, 371 *et seq.* Finally, the House Ways and Means Committee Report accompanying the House version of the Omnibus Budget Reconciliation Act of 1989 makes a statement which must have been referring to Massachusetts law:

> The Committee intends that nothing in this section would prejudice the right of any State to require assignment on Medicare claims as a condition of licensure in the State.

H.R.Rep. No. 247, 101st Cong., 1st Sess., at 1008, *reprinted in* 1989 U.S. Code Cong. & Admin.News 1906, 2479.

Since *Dukakis* seven additional courts and three additional circuits have considered state limits on balance billing, and have held that such limits are not preempted by the Medicare Act. Extensive amendments have been made to the Act since the mid-1980's. Congress would not have been silent in the face of this large body of case law if it truly intended to preempt the States from regulating balance billing.[3]

---

[2] The PPRC was created by Congress in 1985 specifically to advise it on reforms of the methods used to pay physicians under Medicare. 42 U.S.C. §1395w-1.

[3] Petitioners point out that each time an amendment requiring assignment on a federal level has been suggested to Congress, it has been voted down and cite the comments of various congressmen which negatively reference a requirement of

Petitioners also cite two conflict preemption cases, *Fidelity Fed. Sav. & Loan Ass'n. v. De La Cuesta*, 458 U.S. 141 (1982) and *Barnett Bank of Marion County, N.A. v. Nelson*, ____ U.S. _____, 116 S.Ct. 1103 (1996). *De La Cuesta* involves a federal regulation permitting federal savings and loan associations to use "due-on-sale" clauses in mortgage contracts. The language of the regulation in question in *De La Cuesta* unequivocally expresses an intent to displace State law. 458 U.S. at 159, *quoting* 12 C.F.R. §545.8-3(f). No such intent is expressed in the Medicare law.

De La Cuesta also involves the grant by a federal agency of a specific power to enforce due-on-sale clauses to a federal association. Non-participating physicians are not authorized and empowered by the federal government as are federal savings and loan associations. Physicians are practitioners subject to regulation by State government through traditional police powers expressed as licensure laws. In the absence of an explicit statement of preemption, Congress cannot "empower" a physician to balance bill.

Similar to *De La Cuesta*, the federal statute at issue in *Barnett Bank* empowered a national bank to engage in the business of selling insurance in towns of fewer than 5,000 people. Also like *De La Cuesta*, the statute in *Barnett Bank* expresses a broad permission to national banks to "act as the agent" for the sale of insurance. 116 S.Ct. at 1108, 12 U.S.C. § 92. The statute also states that the power to sell insurance is "an addition to the powers now vested by law in national [banks]" *Id.* In contrast, the Medicare statute does not speak in broad terms about permission granted to non-participating physicians, nor does it

---

assignment by physicians. Petition for Certiorari, pp. 23-25. Remarks during debate on a bill indicate only that particular Congressmen were against balance billing on a federal scale. Nothing in the bill or in the remarks indicates hostility to State regulation. *See Dukakis*, 815 F.2d at 794.

pretend to vest physicians with federal powers that supersede the powers granted them by the States.

In both *De La Cuesta* and *Barnett Bank*, compliance with both state and federal law was impossible. A federal savings and loan association could not obey both the federal regulation (empowering enforcement of due-on-sale clauses) and the California law (forbidding the enforcement of due-on-sale clauses). A national bank cannot obey both the federal statute (empowering the sale of insurance) and the state law (forbidding the sale of insurance). In contrast, it is quite possible for a doctor in this case to comply with both State law (forbidding balance billing) and federal law (silent on balance billing).

Petitioners have also cited a number of cases for the proposition that "all state limitations on providers' rights to recover their reasonable costs and charges" are preempted. (Petition pp. 18-21; *New York City Health and Hospitals v. Perales*, 954 F.2d 854 (2d Cir. 1992), *cert. denied*, 506 U.S. 972 (1992); *Rehabilitation Ass'n of Virginia, Inc. v. Kozlowski*, 838 F.Supp. 243, 249-250 (E.D. Va. 1993), *aff'd* 42 F.3d 1444 (4th Cir. 1994) *cert. denied* _____ U.S. _____, 116 S.Ct. 60 (1995); *Pennsylvania Medical Soc. v. Snider*, 29 F.3d 886 (3rd Cir. 1994); *Haynes Ambulance Service, Inc. v. State of Ala.*, 36 F.3d 1074 (11th Cir. 1994).) These cases are easily distinguishable. None of them hold that a statute banning balance billing is preempted. All four cases involve the interaction of the Medicaid and Medicare systems, and the treatment of so-called "QMBs" or "dual eligibles," issues not present in this case.

Several States have tried to cap reimbursement to providers of services to dual eligibles to the State-determined Medicaid amount, an amount below the Medicare "reasonable amount." The cited cases stand for the proposition that the federally-mandated Medicare "reasonable amount" must be reimbursed for the care of dual eligibles. The cases hold nothing about a physician's right to receive anything greater than the "reasonable amount." Regulation of the amount greater than the "reasonable amount" has been left to the inherent police powers of the States.

Finally, conflict preemption is inapplicable to this case because both the Medicare Act and the Ohio Law are intended to achieve the same goal. The Ohio statute does not "frustrate the attainment of specific objectives that federal legislation is designed to promote," (*Stern v. General Elec. Co.*, 924 F.2d 472 (2nd Cir. 1991)); to the contrary, both seek to provide affordable health care to those over 65. As both laws are intended to promote the same end, there is no conflict.

This case presents no new issues of law in the area of preemption, and the State law is not preempted in any case. This Court has no reason to entertain this case.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court deny certiorari in this matter.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General
JEFFREY S. SUTTON
State Solicitor
ELISE W. PORTER
Assistant Attorney General
Counsel of Record
30 East Broad Street, 26th Fl.
Columbus, Ohio 43215
(614) 466-8600
Counsel for Respondent
PETER SOMANI, M.D. Ph.D.
Director, Ohio Dept. of Health

October 4, 1996